



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

'JUL 14 2009

William J. Breazeale
Post Office Box 717
Elizabethtown, North Carolina 28337

RE: MUR 6140
William J. Breazeale
Breazeale for Congress, and Kenneth
Ray Pervine, in his official capacity
as treasurer

Dear Mr. Breazeale:

On December 9, 2008, the Federal Election Commission notified you and your committee, Breazeale for Congress, and Kenneth Ray Pervine, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on July 2, 2009, voted to dismiss this matter as to you and your committee, and has closed the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information. The Commission reminds you that you and your committee appear to have violated 2 U.S.C. § 439a(b). You and your committee should take steps to ensure that this activity does not occur in the future.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact J. Cameron Thurber, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan L. Lebeaux".

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** William James Breazeale **MUR: 6140**
6 Breazeale for Congress, and
7 Kenneth Ray Pervine, in his official capacity
8 as treasurer
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 ("Commission") by Citizens for Responsibility and Ethics in Washington. *See* 2 U.S.C.
13 § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint alleging
14 that William James Breazeale, and Breazeale for Congress, and Kenneth Ray Pervine, in his
15 official capacity as treasurer ("Breazeale Committee"), violated 2 U.S.C. § 439a(b)(2)(B) and
16 11 C.F.R. § 113.1(g).

17 **II. DISCUSSION**

18 The complaint alleges that on October 4, 2007, the Breazeale Committee spent \$1,000 for
19 "clothes for campaign events" at Fisher's Men's Store for the candidate's personal use, as
20 reflected in its 2007 Amended Year End Report filed on April 25, 2008.

21 In his response on behalf of his committee, Mr. Breazeale states that because he is an
22 airline pilot and U.S. Army Reserve officer, he did not have "the type of clothing required for a
23 Congressional campaign." He further states, "In my judgment, I was authorized to buy clothes
24 for my campaign using campaign funds because it could be argued the clothes would not be for
25 my personal use except as required by the campaign." Response at 1. Nevertheless, after
26 conferring with his treasurer and having the treasurer call the Commission for advice, Mr.
27 Breazeale reimbursed his committee months before the complaint was filed. He attached to the

1 response a copy of his personal check used for this purpose. According to the response, this
2 "was a simple and unintentional mistake" that was "self-disclosed to the FEC [through a phone
3 call requesting advice] when discovered in September 2007." The Breazeale Committee's 2007
4 Amended October Quarterly Report filed on March 26, 2009, disclosed the candidate's
5 reimbursement.

6 2 U.S.C. § 439a(b)(1) states, "A contribution or donation described in sub-section (a)
7 shall not be converted by any person to personal use." Sub-section (a) refers to "[a] contribution
8 accepted by a candidate, and any other donation received by an individual as support for
9 activities of the individual as a holder of Federal office" The statute further states in sub-
10 section (b)(2) that "a contribution or donation shall be considered to be converted to personal use
11 if the contribution or amount is used to fulfill any commitment, obligation, or expense of a
12 person that would exist irrespective of the candidate's election campaign or individual's duties as
13 a holder of Federal office, including . . . (B) a clothing purchase" See also 11 C.F.R.
14 113.1(g)(1)(i)(c) (use of campaign funds for the purchase of clothing, other than items of *de*
15 *minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign
16 slogans, constitutes personal use).

17 Moreover, the Explanation and Justification for the regulation states that all but a *de*
18 *minimis* amount spent on clothing is *per se* personal use, and specifically supersedes Advisory
19 Opinion 1985-22 (Clay), which could be read to allow "specialized attire" to be worn at both
20 social and politically-related functions. Personal Use of Campaign Funds, 60 Fed. Reg. 7861,
21 7864-5 (Feb. 9, 1995). Therefore, the response from the Breazeale Committee indicating that the
22 clothing purchases would exist "irrespective" of the candidate's election campaign does not

1 provide a valid defense under the circumstances presented. *See* 2 U.S.C. § 439a(b) and 11 C.F.R.
2 § 113.1(g).

3 Mr. Breazeale used campaign funds from his authorized committee for clothing
4 purchases, which were of more than *de minimis* value, in violation of the prohibition on personal
5 use of campaign funds. 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g). However, Mr. Breazeale
6 reimbursed the Breazeale Committee before the complaint was filed. Moreover, the alleged
7 amount in violation is so low that it would not merit the further use of Commission resources to
8 pursue this matter. *See* Statement of Policy Regarding Commission Action in Matters at the
9 Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545-6 (Mar. 16, 2007).

10 Therefore, the Commission has exercised its prosecutorial discretion and decided to
11 dismiss the complaint and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).